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February 6, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Opinion

Case Name: Personnel Security Hearing

Date of Filing: March 24, 2005

Case Number: TSO-0212

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this decision, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

DOE granted the individual an access authorization many years ago after he gained employment with a DOE contractor. During a routine background investigation, the local DOE security office (DOE Security) uncovered derogatory information that it was unable to resolve through a 2003 Personnel Security Interview (PSI) or a DOE-sponsored psychiatric examination. Consequently, it initiated formal administrative review proceedings. In a Notification Letter issued to the individual on December 16, 2004,

DOE Security stated that it was suspending the individual's access authorization pending the resolution of certain derogatory information that falls within the purview of two potential disqualifying criteria, Criteria F and L.¹

Upon receipt of the Notification Letter, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 1, 2005, the Director of the Office of Hearings and Appeals appointed me the hearing officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called a DOE personnel security specialist as its sole witness. The individual testified on his own behalf, and called as witnesses his wife and seven former or current co-workers. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by the individual will be cited as "Ind. Exh."

The Notification Letter and the Security Concerns at Issue

With respect to Criterion F, DOE Security alleges that the individual provided false information during the course of his October 2003 PSI. Specifically, the Notification Letter alleges that the individual intentionally falsified information in response to questions during an October 2003 personnel security interview (PSI): (1) after denying that he had ever talked in Internet chat rooms, he later admitted that he started doing so two or three months before his December 2001 divorce, though other sources stated he started participating in chat rooms in the spring of 2001; (2) he similarly denied discussing issues of a sexual nature in chat rooms, though other sources, and he himself later in the PSI, stated that he had engaged in such discussions; (3) he stated that pornography had never been an issue in his first marriage, though other sources stated that it had been; and (4) he stated that he had never viewed pornography on his work computer, though other sources, and he himself later in the PSI, stated that he had done so.

With respect to Criterion L, DOE Security's allegations fell into three categories: pornography, financial irresponsibility, and dishonesty. During a 2003 Office of Personnel (OPM) investigation, sources stated that the individual accessed Internet chat rooms and engaged in sexually explicit conversations on a work computer. Regarding financial irresponsibility, DOE Security's concerns centered on the individual's two bankruptcies, a Chapter 7 bankruptcy filed in 1998 and a Chapter 13 bankruptcy filed in

¹ Criterion F relates to information that a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization or proceedings conducted pursuant to § 710.20 through 710.31." 10 C.F.R. § 710.8(f). Criterion L relates, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. . . ." 10 C.F.R. § 710.8(l).

2003. After the 1998 bankruptcy the individual told DOE Security that he intended to live within his means. By 2001, however, he had acquired and charged to the maximum three credit cards, was unable to keep up with his mortgage, and failed to maintain auto insurance coverage. By 2003 he had amassed large debts, his home was about to be foreclosed upon, and he admitted that his current wife had expensive tastes that he was unwilling or unable to prevent her from indulging. The final category of DOE concerns regarded a series of misrepresentations of pertinent information that caused the DOE to question the individual's honesty, reliability and trustworthiness: (1) in 2001 the individual told his family he was going on a fishing trip, when in fact he traveled to visit a woman he had befriended on the Internet; (2) in 2003 he told an Office of Personnel Management (OPM) investigator, under oath, that he had not had any financial difficulties since his 1998 bankruptcy, though he later stated in a PSI that he had driven his car without insurance and was behind on home mortgage payments; (3) during a 2003 PSI he denied getting angry during a family dispute, though he later admitted to shoving his daughter and breaking a video camera; (4) during the same PSI he denied that he had viewed pornography at home and that it was an issue in his marriage; and (5) the day before his second bankruptcy was filed, he did not mention the impending bankruptcy when a DOE-consultant psychiatrist questioned him about his financial situation.

I have concluded that DOE Security correctly invoked Criterion F and Criterion L in this case. The individual initially denied each of DOE Security's Criterion F concerns-- his use of computers to access chat rooms and view pornography, the sexual nature of his online conversations, and the role of pornography in his previous marriage-- though his OPM background investigation supplied evidence that he had engaged in the activities he denied. Moreover, except for his steadfast denial of viewing pornography, the individual reversed himself later in the same PSI, admitting that he had in fact used computers to access chat rooms and discussed matters of a sexual nature in those chat rooms. Even without considering whether these activities were appropriate, particularly in the workplace, the individual's inconsistent statements clearly raised a significant concern that the individual had made false statements during a PSI.

Regarding DOE Security's Criterion L concerns, the individual's computer use presents a legitimate concern in that it is unusual conduct that he concealed it from others. His apparent need to conceal his activities could make him subject to pressure, coercion, blackmail or duress. His financial difficulties represent a pattern of financial irresponsibility that could render him subject to pressure, coercion, blackmail or duress. In addition, "[f]ailure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Guideline F: Financial Considerations, Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, December 29, 2005, at 9 (Guideline F). Finally, the numerous situations in which the individual provided false information or withheld critically relevant information raise significant concerns about the individual's honesty, reliability, and truthfulness, and further concerns that the individual may be subject to pressure, coercion, blackmail or duress.

II. Findings of Fact

A. Financial Irresponsibility

The individual and his wife filed a Chapter 7 bankruptcy in May 1998. According to his June 1, 1998 response to DOE Security's Letter of Interrogatories (LOI), the debts that overwhelmed the family's finances were created in part by his son's medical condition, which was alleviated by an expensive operation, and in part by financial irresponsibility. DOE Exh. 1 at Response to Question 13. At the hearing, the individual conceded that financial irresponsibility, in addition to repairs and medical bills, was a significant cause of the bankruptcy. Tr. at 188. In his response to the LOI, he also stated that he was committed to living within his means in the future. *Id.* at Response to Question 19. During a July 1998 PSI he told the interviewer, "[w]e're gonna live on cash. . . . if we can't buy it with cash, we're not going to buy it." DOE Exh. 3 at 21.

During a December 2003 PSI the individual stated that, after his 2001 divorce from his wife of twenty years and before he married his current wife, he fell behind on home mortgage payments. DOE Exh. 10 at 16 (assessing blame on his former wife's mishandling of those payments). At the same time, his automobile insurance was canceled, allegedly due to his bad credit rating rather than for any failure to make payments, and he drove without insurance. *Id.* at 18-19. In addition, he obtained three credit cards. *Id.* at 26. They all had low credit limits, due to his previous bankruptcy. *Id.* He made charges, using them to their maximum limits. *Id.* at 27. At the hearing, he offered two reasons for his acquisition of credit cards. One was that he took responsibility for the expenses of the divorce and for the great majority of the pending debts from the marriage. Tr. at 34, 179. The other was as follows: "I guess I just messed up and got credit cards. I have no excuse for doing it. It was one of those things that I don't have an excuse for." Tr. at 180. Nevertheless, in 2002, he bought \$5000 wedding rings for his current wife and himself, to impress her. *Id.*; DOE Exh. 10 at 28.

After his marriage to his current wife, he faced additional financial strains: foreclosure on his home, DOE Exh. 10 at 40, medical bills as a result of his wife's shoulder injuries, *id.* at 13, and his wife's expensive tastes, which he had considerable difficulties curtailing. *Id.* at 11, 28-30. Ultimately, they returned the wedding rings for partial credit. Tr. at 144, 155-56. On October 29, 2003, the individual signed a second bankruptcy petition, this time a reorganization under Chapter 13, which was filed on October 31, 2003. DOE Exh. 8.

As mitigation of his financial irresponsibility, the individual testified that he had now convinced his wife of the need to curtail her expenditures, and his family had been living within a budget he established after the second bankruptcy that permitted them to meet their monthly Chapter 13 payments as well as all their current living expenses. Tr. at 33-34. The individual's wife testified as well that they live within a fixed budget now. She no longer spends large sums on her hair and nails. Tr. at 155. She has one credit card on which she has made no charges in more than a year and a half; she is slowly paying off

the balance in an attempt to rebuild her credit rating. Tr. at 158. At the time of the hearing, the individual testified that he was meeting his monthly payment schedule under the 2003 Chapter 13 bankruptcy plan through payroll deduction, and had sufficient take-home pay to meet their current domestic needs. Tr. at 173-175. After the hearing, the individual provided documentation that he completed his payment requirement under the Chapter 13 plan in advance of schedule, and the bankruptcy court discharged the bankruptcy in September 2006. DOE Exh. 17.

B. Internet Chat Rooms and Pornography

In the course of reinvestigating the individual's eligibility for continued access authorization in early 2003, sources informed the OPM, during its routine investigation, that the individual was using a computer at work to view pornographic websites and to exchange sexually explicit language with others in online "chat rooms." Tr. at 14 (testimony of personnel security specialist). During an October 2003 PSI, the individual responded to those statements. At first, the individual denied using his work computer for either purpose. When asked whether sexual topics were discussed in his chat room conversations, he answered, "No." DOE Exh. 7 at 17. Shortly thereafter, he stated that after his divorce, "I started talkin', [in a sexual manner], a little bit . . . but not that much." *Id.* at 20. He seemed to draw a distinction between discussions of a sexual nature and sexually explicit language, and denied use of the latter. *Id.* at 32. He stated that he had participated in discussions of a sexual nature only twice in chat rooms, and both times from his home computer. *Id.* at 40. He then estimated that he participated in chat rooms of a non-sexual nature from his work computer three times a month for 30 minutes or so each session, and admitted that it was not an acceptable use of the work computer. *Id.* at 44. Later in the same interview, the individual admitted that he asked chat room participants, "maybe a little about . . . 'do you—do you like sex?' . . . [Y]ou know after I've talked to 'em for a while, it wasn't right off the bat, . . . but it wasn't . . . nothin' . . . that I would figure that was . . . sexual as . . . as far as . . . explicit." *Id.* at 75. A bit later he stated, "I'd . . . ask 'em if they'd . . . like oral sex . . . whether they'd . . . ever done anything like that." *Id.* at 88. Finally, he recognized, seemingly for the first time, that such topics were of a sexually explicit nature, *id.* at 85, and admitted that he had used sexually explicit language in chat rooms while at work before his divorce. *Id.* at 90. He claimed that he had misunderstood what the interviewer meant by "sexually explicit" language; he acknowledged that his conversations on sexual matters were inappropriate, but maintained they were not sexually explicit because they were not "disgusting" or "totally outrageous" to him. *Id.* at 93. At the hearing, the individual acknowledged that he had participated in chat rooms while on duty, and used sexually explicit language during those conversations. Tr. at 197. He also admitted taking part in chat rooms, and using sexually explicit language, from his home computer while he was still married to his former wife. Tr. at 216.

In mitigation of his chat room activity, the individual told DOE Security in October 2003 that he had not participated in a chat room in over a year, for two reasons: he now found the language disgusting, and his current wife was jealous of his communicating with any other women. DOE Exh. 7 at 62-65. At the hearing, his wife testified that she had not

seen him engage in that activity in the three years of their marriage. Tr. at 117. He corroborated this testimony, stating at the time of the hearing that he had stopped going into chat rooms “well over three years ago.” Tr. at 211.

On the other hand, the individual maintained, during the October 2003 PSI, that he did not view pornography on his home or work computer, nor did he read pornographic magazines. DOE Exh. 7 at 21, 27, 57. A practical joke played by his co-workers had caused him embarrassment when his wife discovered a pornographic magazine planted among his belongings. *Id.* at 22. The individual also acknowledged that “pop-ups” containing pornographic content had occasionally appeared on his work computer screen, but he maintained that their appearance was beyond his control. *Id.* at 71. At the hearing, the individual reiterated that the only pornographic material that he ever saw on his work computer were unwanted “pop-ups,” and he testified that pop-ups stopped appearing when his employer established individual log-in procedures, prior to which the computer work stations were available to anyone. Tr. at 29, 212. The individual could not give a date when individual log-in procedures were implemented. Tr. at 212. He testified that he never “went to a site on purpose to look at pornography.” Tr. at 229. As for viewing pornography at home, he has consistently stated that he never viewed pornography on his home computer. Tr. at 217. His assertions contradict statements his ex-wife made under oath to an OPM investigator. DOE Exh.15 at 17.

C. Misrepresentation

As stated in the above section, during the October 2003 PSI, the individual first denied that he had participated in Internet chat rooms at work or at home. He then admitted participation, from both work and from home, but denied using sexually explicit language. Ultimately, he conceded that he had used sexually explicit language in Internet chat rooms, contending that he had denied using such language because he had misunderstood the term. The reason he gave at the hearing for misrepresenting the truth during the PSI was that he was embarrassed to discuss the topic with the female interviewer. Tr. at 37, 214.

During the October 2003 PSI, the individual also initially denied viewing pornography on either his home or work computer. With respect to viewing pornography at work, he altered his position later in the PSI, as discussed above, acknowledging that pornographic material appeared on his work computer in the form of “pop-ups.” At the hearing, he offered this explanation for first denying contradicting himself during the PSI: he realized that he should admit to seeing the “pop-ups” that contained pornographic content even though they appeared on his screen involuntarily. Tr. at 217, 229. As for viewing pornography at home, as stated above, the individual steadfastly maintains that he never did so. When confronted with OPM source testimony that he did, he accused his ex-wife and children of fabricating statements to that effect merely to get him into trouble. DOE Exh. 7 at 76-77. At the hearing, he stated that such statements are “vindictive. They want to pay me back for what I did to them.” Tr. at 33.

Around November 2001, the individual, then still married and living with his wife and children, flew to another state to spend a weekend with a woman with whom he had been communicating on the Internet for one or two months. DOE Exh. 7 at 10-11. He explained that he was unhappy and bored in his marriage and contemplating divorce. *Id.* at 13-14, 59. His wife was not aware that he was communicating with another woman online. *Id.* at 12. He told his family that the purpose of that weekend trip was fishing. *Id.* at 15. He admitted to kissing the woman during that weekend, but denied having any sexual relations with her. *Id.*

Shortly after that weekend, his wife and children confronted him with a printout of an amorous e-mail sent by another woman to him on his home computer. *Id.* at 8. His explanation was that he did not even know who the sender was, but that she had obtained his e-mail address from a conversation he must have had with her in a chat room. *Id.* at 8, 47. It appears that emotions then escalated in the confrontation. At first he stated to the interviewer that he had no idea why his son had called the police. *Id.* at 4. He then admitted that he pushed his daughter and broke a video camera his son was using to film the confrontation. *Id.* at 6, 7. When his wife confronted him by stating she knew he had not gone fishing but rather visited another woman, he responded out of anger that it was the best sex he had had in 20 years. *Id.* at 51. The individual's denial of his anger during this unfortunate situation raised a concern for his honesty, reliability and trustworthiness, from DOE Security's perspective.

DOE Security was also concerned about the individual's lack of candor concerning financial stresses, as described in the above section concerning financial irresponsibility, particularly during the period following his 2001 divorce through the filing of his second bankruptcy in 2003. He succeeded in keeping this information from DOE Security despite questioning during his March 2003 OPM investigation, October 2003 PSI, and October 2003 psychiatric evaluation. At the hearing, the individual contended that he did not intend to mislead when he told the OPM investigator that his divorce had not caused him any financial stress, but rather misunderstood the question. Tr. at 219. In any event, he admitted at the hearing that the divorce had in fact caused financial stress. Tr. at 220.

On October 30, 2003, the individual was evaluated by a DOE-consultant psychiatrist. On the basis of an evaluative interview he performed, as well as psychological tests he administered and his review of DOE Security's personnel security records on the individual, the psychiatrist compiled and issued a report to DOE Security. DOE Exh. 9. In his report, the psychiatrist wrote:

In the area of falsification and lack of willingness to accept responsibility, it is my opinion that he had probably minimized to some degree, but does seem to be taking responsibility in some areas, for instance, cheating on his wife, wrongfully going to [visit the women he met on the Internet], his behavior at the domestic dispute. On the other hand, there would still be a concern that he has minimized his use of sexual materials on the Internet, however I am not concerned that this represents any type of mental disorder.

Id. at 8-9. He also stated his opinion that the individual appeared to be happy and stable in his new marriage. *Id.* at 9. His risky behavior on the Internet was most likely due to his unhappiness in his prior marriage, and would be unlikely to recur unless his new marriage “were to go wrong.” *Id.* The psychiatrist also stated in his report that the individual acknowledged as a source of anxiety significant financial worries, in the form of high medical bills for his son, which resulted in a Chapter 7 bankruptcy. *Id.* at 4.

In December 2003 DOE Security interviewed the individual again. The individual had filed for a second bankruptcy on October 31, 2003, the day after he met with the psychiatrist. DOE Exh. 8 (Chapter 13 Bankruptcy Petition). He had signed the petition on October 29, the day before the evaluation. DOE Security’s major concern was that he had not mentioned the impending filing to the psychiatrist when they were discussing his financial affairs during the evaluation. In the course of this PSI, the individual offered various explanations for his failure to mention such an important event. He first told the interviewer that he did not discuss the impending bankruptcy because he “didn’t have the current bankruptcy at the time”; although he had signed it the day before, it had not yet been filed. DOE Exh. 10 at 46-48. He stated that he did not think it was pertinent at the time. *Id.* at 50. When pressed on the matter, he then responded, “[M]aybe I forgot. . . . that I’d filed the day before, I don’t know . . . I can’t remember why I forgot.” *Id.* at 51. He explained further: his attorney had not yet filed the bankruptcy petition and “he had no case number showin’ that I filed a Chapter 13 yet . . . so I didn’t think it was relevant that I had to report it,” despite the fact that the context of his discussion with the psychiatrist was the anxiety that financial stress had caused him at the time of his 1998 bankruptcy. *Id.* at 53. At the hearing, the individual testified that he did not discuss his impending second bankruptcy with the psychiatrist, because it represented to him a release from financial pressures: “I felt there was no more stress.” Tr. at 219.

A new inconsistency arose at the hearing. During his October 2003 PSI, the individual stated that he had met his current wife “over the Internet.” DOE Exh. 7 at 19. After a month or more of online correspondence, he went to meet her in person. *Id.* at 61. At the hearing, the individual and his wife were both adamant that they had not met over the Internet, but rather had met in person, entirely by chance. Tr. at 125-26 (testimony of wife), 209-10 (testimony of individual). When questioned about this inconsistency, the individual offered this explanation:

I think I did tell [DOE Security] that I met her on the Internet. It says it right there [in the transcript of the PSI]. It’s in plain black and white. I said that. But I think I said it just to say it, because I knew . . . they already cornered me on the being on the Internet. I knew that they knew that. And I think I said what I did about meeting her on the Internet as a way to kind of escape part of it, as in I was trying to find my way out of why I was on the Internet talking, chatting. . . . I think I was trying to cover up, that I was actually on the chat rooms talking nasty, which I shouldn’t have been doing to begin with. I think that’s a big portion of why I lied [to] them that I met her on the Internet. . . . I realize . . . it says

that I met her on the Internet. And it's unexcusable. I don't have any excuse for it. I shouldn't have said that. I was trying to dig myself out of a hole that I was in, that I knew I had to come up with some reason why I was on [the Internet].

Tr. at 209-11.

III. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information that raises security concerns, the burden is on the individual to come forward with evidence to convince the DOE that granting or restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against granting or restoring access authorization. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of access authorizations indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issue of an access authorization).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored, because I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings I make in support of this determination are discussed below.

A. Criterion F: Falsification

The Notification Letter lists several instances in which the individual made false statements. Their falsehood, in many instances, became apparent when the individual

contradicted himself within a single setting, such as during the October 2003 PSI. What was not apparent was which of the statements he made were true and which were false. Where the misrepresentations were made during personnel security interviews, DOE Security determined that they raised concerns under Criterion F; where they were made under other circumstances, such as during OPM background investigations, during his evaluation by the psychiatrist, or in interactions with his family, DOE Security determined that they raised concerns under Criterion L. Under Criterion F, the overarching concern is that the DOE security system is based on trust, and when an access authorization holder breaches that trust, it is difficult to determine the extent to which the individual can be trusted in the future. *See, e.g., Personnel Security Hearing, Case No. TSO-0361, 29 DOE ¶ 82,970 at 86,586 (2006); Personnel Security Hearing, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), aff'd, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000).*

The record demonstrates that the individual has engaged in a pattern of providing false information. It is clear from the record that the individual contradicted himself during the October 2003 PSI regarding his involvement with chat rooms, by first denying any participation in chat rooms and any use of sexually explicit language then admitting to both. His contradictory statements in this regard demonstrate intentional falsification.

On the other hand, it is not clear that the individual intentionally falsified his statements regarding viewing pornography at work, for the reasons set forth in the “Unusual Conduct” section below. Concerning viewing pornography at home, the evidence is contradictory and cannot be reconciled: he has consistently stated under oath that he never did so, while his ex-wife told the OPM investigator, also under oath, that he did. In view of his unreliable testimony regarding other sex-related activities on the Internet, the weight of the evidence favors the truth of his ex-wife’s statements. Under these circumstances, the individual has not convinced me that he has never viewed pornography in the home. Because I cannot conclude that he never viewed pornography in his home, I remain concerned that he felt obliged to conceal that activity. His denials of this activity therefore constitute falsification.

In any event, at the hearing, he admitted that he had willfully misrepresented information to DOE Security: “I lied to these people on a lot of the stuff. . . . [I]t’s not that I wanted to, but I was scared. I knew I had done wrong. . . . I did things to cover up things, to make things not look as bad as they were. I was worried about my job. I was worried about my clearance.” Tr. at 223-24.

In mitigation, the individual stated at the hearing that he was now “trying to be as honest as I can with you,” and that he learned his lesson about hedging on the truth. Tr. at 210, 223. Even if I were to accept these statements as truth, they would not outweigh the individual’s long-time pattern of misrepresentation and misleading omissions. I cannot at this time be certain about which are the instances in which the individual has spoken truthfully and which are not, and on that basis I cannot predict with any confidence whether any statement the individual might make in the future to DOE Security would be

truthful or not. Therefore, the individual has not successfully mitigated DOE Security's concerns under Criterion F.

B. Criterion L: Honesty, Reliability and Trustworthiness

Under Criterion L, the DOE's concern is more general than under Criterion F: that when an individual makes false statements, even when the DOE security system does not rely on them, his honesty, reliability and trustworthiness are called into question.

1. Misrepresentations

The individual's misrepresentations that raise Criterion L concerns for DOE Security are varied: they were made to family members, to an OPM investigator, and to a psychiatrist to whom DOE Security referred the individual; they concerned lying about a trip, denying financial stresses, denying anger, and denying involvement with pornography. Many could be characterized as merely attempts to place the individual's action in the best light rather than attempts to willfully conceal the painful truth. Nevertheless, I find that they represent a pattern of disregard for the truth, which renders the individual's statements unreliable. Even his explanations for his misrepresentations were inconsistent, and therefore not reliable. When asked to explain why he did not mention his impending second bankruptcy when discussing his financial stresses during his evaluation by the psychiatrist, the individual told the interviewer at one point that the upcoming bankruptcy was not stressful, and later that perhaps he had forgotten to mention it. DOE Exh. 10 at 50, 51. At the hearing, he admitted that he had not fully disclosed that he was experiencing financial problems at the time of the evaluation. Tr. at 220. A more telling example is the question of whether the individual and his current wife met on the Internet. At the hearing both testified that they had not met on the Internet. Yet the individual told the personnel security specialist during the October 2003 PSI that he had met his current wife on the Internet. At the hearing he explained that he had lied to the personnel security specialist to cover up the fact that he was "actually on the chat rooms, talking nasty." Tr. at 210. As I explained to the individual at the hearing, how the couple met matters little as a security concern. Far more critical to my decision is the fact that it is next to impossible to ascertain which statement is the truth and which the lie.

In mitigation of this concern, the individual testified at the hearing that he has now learned that he must be forthright with DOE Security. *See* Criterion F section, above. After considering all the evidence on this matter, my opinion is that the individual makes statements to DOE Security, as well as to others, with more concern for their acceptability than for their veracity. His disregard for the truth is "unusual conduct . . . which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interest of the national security." As such, the individual's conduct in this regard raises a legitimate security concern under Criterion L, which he has not sufficiently mitigated.

2. Unusual Conduct

At the hearing, the individual testified that he stopped participating in chat rooms after he met his current wife. No evidence is in the record that contradicts this statement. The individual and his current wife were married in 2003. He testified that he was attracted to chat rooms because he was lonely. Tr. at 30. It is my opinion that the individual has in fact stopped participating in online chat rooms, and had not done so for at least three years before the hearing. I find support for this opinion in his wife's corroboration of his testimony, Tr. at 117-18, and the fact that his likely motivation for this conduct, his loneliness, was alleviated when he met his current wife. The testimonial evidence convinces me that the individual will not participate in chat rooms in the future. DOE Security's concerns have therefore been mitigated in this regard.

The evidence concerning the individual's involvement with pornography falls into two categories: viewing pornographic materials at home and viewing them at work. With respect to pornography at home, the only evidence that contradicts the individual's consistent position that he has never viewed pornography is statements his ex-wife made to an OPM investigator. The individual maintains that she and their children made false statements as revenge for the hurt they felt at the end of that marriage. While this may well be their motivation, I must consider the fact that the ex-wife made her statements under oath, just as the individual made his protestations of innocence under oath. Under these circumstances, the individual has not mitigated this security concern.²

On the other hand, it is my opinion that the individual has mitigated DOE Security's concern that he was viewing pornography at work. Although he first maintained he had never viewed any pornographic material on his work computer, he later backed away from that position when he recalled that unwanted "pop-ups" appeared occasionally on his monitor screen, some of which had pornographic content. The evidence that he had viewed pornography on his work computer was obtained from a co-worker. At the hearing, the individual produced testimony from another co-worker that, during the period when work computers were accessible to all employees, before their employer instituted individual log-on procedures, pornographic images would "pop up" on the monitors. Tr. at 134-35. The evidence on this matter is not inconsistent. I find that "pop-ups" containing pornographic images appeared, unsolicited, on computer monitors during a certain period at the worksite. In the absence of any evidence that he actively sought pornographic material on his work computer, I have concluded that the individual has mitigated the security concerns associated with this matter.

² I note that viewing pornography in the privacy of one's home may not in fact raise a significant security concern as unusual conduct. In the individual's case, however, a very serious security concern arises from these facts, because, as noted above in the Criterion F section, if he was in fact viewing pornography on his home computer, he went to great lengths to conceal that fact. His attempts to conceal this activity raise a Criterion L concern as well, in that they place in question his honesty, reliability and trustworthiness, and render him subject to pressure, coercion, exploitation or duress. In any event, even if I were to rule in favor of the individual regarding this specific concern, the outcome of this decision would not be affected.

3. Financial Irresponsibility

The individual has demonstrated that his family now has a budget. Ind. Exh. B. That budget, developed after the 2003 Chapter 13 bankruptcy, shows that the family income exceeds its expenses, including its monthly payment to the bankruptcy trustee, by roughly \$700. The \$700 cushion should be sufficient to handle most unforeseen expenses. At the hearing, the individual testified that they are adhering to the budget's restraints. The wife testified that she has curbed her expensive tastes and understands the need to live within their financial means. The individual also acknowledged that, though medical bills were a factor leading to both bankruptcies, irresponsible spending contributed to them as well. In addition, the individual submitted a document after the hearing that indicates that they accelerated their payment schedule under the bankruptcy plan, and fulfilled their obligations in September 2006. DOE Exh. 17 (Discharge of Debtor after Completion of Chapter 13 Plan).

The question before me then is whether the individual has produced sufficient evidence to permit me to conclude that his previous pattern of financial irresponsibility has been broken and will not repeat itself in the future. The DOE's concern with financial irresponsibility is that it could be evidence of poor judgment, lack of self-control, and unwillingness to abide by rules and regulations. Guideline F. In addition, from the viewpoint of common sense, the shortfall of available money that results from financial irresponsibility makes an individual "subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interest of the national security." Criterion L. The individual's pattern of financial irresponsibility in the past certainly raised such concerns. In prior cases involving financial irresponsibility, we have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *Personnel Security Hearing, Case No. TSO-0194*, 29 DOE ¶ 82,881 at 86,135 (2005), citing *Personnel Security Hearing, Case No. VSO-0108*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the individual's pattern of financial irresponsibility extended from some time before the filing of his first bankruptcy in 1998 through the filing of his second bankruptcy in 2003. The evidence he has presented in this proceeding convinces me that he has changed his approach to family finances, and has no intention to incur debts that are beyond those that his family's income can support. Unfortunately, his recent pattern of financial responsibility is too short-lived to assure me that he will be able to live up to his intentions, which mirror those he expressed after his first bankruptcy as well. Moreover, I am not convinced that the individual would exercise restraint, in spite of his intentions, if faced with any number of unexpected situations: his wife desiring an expensive token of devotion, particularly after living within their means for so long, or a sudden and irresistible investment opportunity, for example. I have therefore concluded that the individual has not sufficiently mitigated this security concern under Criterion L.

IV. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(f) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has not sufficiently mitigated all of the specified security concerns. I therefore do not find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the provisions set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: February 6, 2007